

PT 98-78

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE KANKAKEE BOARD OF REVIEW)		
Intervenor)	Docket #	95-46-58
v.)		
)	Parcel Index #	09-31-100-021
OAKSIDE CORPORATION (Owner))		
And RIVERSIDE SENIOR LIVING)		
CENTER (Lessee))		
Applicant)	Barbara S. Rowe	
And THE DEPARTMENT OF REVENUE)	Administrative Law Judge	
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Gregory A. Deck, Petersen, Deck, Ruch & Baron for Oakside Corporation (Owner) and Riverside Senior Living Center (Lessee); Brenda L. Gorski, Assistant State's Attorney, for Kankakee Board of Review.

Synopsis:

The hearing in this matter was held at 100 W. Randolph, Chicago, Illinois on November 13, 1997, to determine whether or not Kankakee County Parcel Index No. 09-31-100-021 qualified for exemption during the 1995 assessment year.

David Schroeder and Judy Amiano of Oakside Corporation (Owner) and Riverside Senior Living Center (Lessee) were present on behalf of Oakside Corporation and Riverside Senior Living Center.

The issues in this matter include, first, whether Oakside Corporation was the owner of the parcel during the 1995 assessment year; secondly, whether Oakside Corporation is a charitable organization; and lastly, whether the parcel was used by Riverside Senior Living Center for

charitable purposes during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that Oakside Corporation owned the parcel during all of the 1995 assessment year and held the parcel in trust for the use of Riverside Senior Living Center. It is also determined that Riverside Senior Living Center is a charitable organization. Finally, it is determined that Riverside Senior Living Center used the parcel for charitable purposes during the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Kankakee County Parcel Index No. 09-31-100-021 qualified for a property tax exemption for the entire 1995 assessment year was established by the admission into evidence of Department's Exhibit Nos. 1 through 5. (Tr. p. 9)

2. On March 1, 1996, the Department received a property tax exemption application from the Kankakee County Board of Review for Permanent Parcel Index No. 09-31-100-021. Oakside Corporation, as owner, and Riverside Senior Living Center, as lessee, had submitted the request. The board recommended that the exemption for the 1995 assessment year be denied. The Department assigned Docket No. 95-46-58 to the application. (Dept. Grp. Ex. No. 2)

3. On August 22, 1996, the Department granted the requested exemption application, finding that the property was in exempt use for 100% of the 1995 assessment year. (Dept. Ex. No. 3)

4. The Kankakee County Board of Review timely protested the granting of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices in Chicago, Illinois, on November 13, 1997, was held pursuant to that request. (Dept. Ex. No. 5)

6. **BOTH OAKSIDE CORPORATION AND RIVERSIDE SENIOR LIVING CENTER ARE PART OF THE RIVERSIDE HEALTH SYSTEM. (DEPT. EX. NO. 2 P. 65)**

7. The purpose clause of Riverside Senior Living Center, as found in its articles of

incorporation, states in part that:

It shall be the policy of the Corporation to operate for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, The Corporation shall consider the financial circumstances of individual residents and may reduce or waive fees and charges if deemed appropriate and consistent with the financial needs and priorities of the Corporation. (Dept. Ex. No. 2 p. 38)

8. The same language is contained in the organization's corporate bylaws. (Dept. Ex. No. 2 p. 46)

9. Oakside Corporation acquired the parcel in question by a number of trustees deeds dated August 15, 1991. (Dept. Ex. No. 2 pp. 3-17)

10. Oakside Corporation was formed in part to own, lease or otherwise deal with all property, real and personal, of the related entities of Riverside Health System. (Dept. Ex. No. 2 p. 70)

11. The ground lease between Oakside Corporation and Riverside Senior Living Center is for a period of thirty years from November 1, 1991, through October 31, 2021, and does not have a rental charge. (Dept. Ex. No. 2 p. 21)

12. The combined financial statement for Riverside Health System shows that charges in the amount of \$1,419,182.00 were forgone by the medical center in 1995. (Applicant's Ex. No. 1)

13. Both Oakside Corporation and Riverside Living Center are exempt from the payment of federal income tax pursuant to a 501(c)(3) designation by the Internal Revenue Service. (Dept. Ex. No. 2 pp. 58 & 80)

14. At the hearing, the Intervenor offered no facts, evidence, or testimony. In fact, the attorney stated that the taxing districts were given notice of both the original exemption hearing in front of the Board of Review and this hearing. The strongest proponent, as well as representatives of all other taxing districts, chose not to attend the hearing. (Tr. p. 9-10)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

PURSUANT TO THE CONSTITUTIONAL GRANT OF AUTHORITY, THE LEGISLATURE HAS ENACTED PROVISIONS FOR PROPERTY TAX EXEMPTIONS. AT ISSUE IS THE PROVISION FOUND AT 35 ILCS 200/15-65, WHICH EXEMPTS CERTAIN PROPERTY FROM TAXATION AS FOLLOWS:

ALL PROPERTY OF THE FOLLOWING IS EXEMPT WHEN ACTUALLY AND EXCLUSIVELY USED FOR CHARITABLE OR BENEFICENT PURPOSES, AND NOT LEASED OR OTHERWISE USED WITH A VIEW TO PROFIT:

(A) INSTITUTIONS OF PUBLIC CHARITY;. . .

(C) OLD PEOPLE'S HOMES, FACILITIES FOR PERSONS WITH A DEVELOPMENTAL DISABILITY, AND NOT-FOR-PROFIT ORGANIZATIONS PROVIDING SERVICES OR FACILITIES RELATED TO THE GOALS OF EDUCATIONAL, SOCIAL AND PHYSICAL DEVELOPMENT, IF, UPON MAKING APPLICATION FOR THE EXEMPTION, THE APPLICANT PROVIDES AFFIRMATIVE EVIDENCE THAT THE HOME OR FACILITY OR ORGANIZATION IS AN EXEMPT ORGANIZATION UNDER PARAGRAPH (3) OF SECTION 501(C) OF THE INTERNAL REVENUE CODE. . . AND EITHER (I) THE BYLAWS OF THE HOME OR FACILITY OR NOT-FOR-PROFIT ORGANIZATION PROVIDE FOR A WAIVER OR REDUCTION, BASED UPON AN INDIVIDUAL'S ABILITY TO PAY, OF ANY ENTRANCE FEE, ASSIGNMENT OF ASSETS, OR FEE FOR SERVICES

IN CRERAR V. WILLIAMS, 145 ILL. 625 (1893), THE ILLINOIS SUPREME COURT DEFINED CHARITY AS FOLLOWS:

A CHARITY, IN A LEGAL SENSE, MAY BE MORE FULLY DEFINED AS A GIFT, TO BE APPLIED CONSISTENTLY WITH EXISTING LAWS, FOR THE BENEFIT OF AN INDEFINITE NUMBER OF PERSONS, EITHER BY BRINGING THEIR HEARTS UNDER THE INFLUENCE OF EDUCATION OR RELIGION, BY RELIEVING THEIR BODIES FROM DISEASE, SUFFERING OR CONSTRAINT, BY ASSISTING THEM TO ESTABLISH THEMSELVES FOR LIFE, OR BY ERECTING OR MAINTAINING PUBLIC GOVERNMENT. IT IS IMMATERIAL WHETHER THE PURPOSE IS CALLED CHARITABLE IN THE GIFT ITSELF, IF IT IS SO DESCRIBED AS TO SHOW THAT IT IS

CHARITABLE IN NATURE.

IN THE CASE OF METHODIST OLD PEOPLES HOME V. KORZEN, 39 ILL.2D 149 (1968), THE ILLINOIS SUPREME COURT LAID DOWN SIX GUIDELINES TO BE USED IN DETERMINING WHETHER OR NOT AN ORGANIZATION IS CHARITABLE. THOSE SIX GUIDELINES ARE AS FOLLOWS:

- (1) THE BENEFITS DERIVED ARE FOR AN INDEFINITE NUMBER OF PERSONS;
- (2) THE ORGANIZATION HAS NO CAPITAL, CAPITAL STOCK OR SHAREHOLDERS, AND DOES NOT PROFIT FROM THE ENTERPRISE;
- (3) FUNDS ARE DERIVED MAINLY FROM PRIVATE AND PUBLIC CHARITY, AND ARE HELD IN TRUST FOR THE OBJECTIVES AND PURPOSES EXPRESSED IN ITS CHARTER;
- (4) CHARITY IS DISPENSED TO ALL WHO NEED AND APPLY FOR IT;
- (5) NO OBSTACLES ARE PLACED IN THE WAY OF THOSE SEEKING THE BENEFITS; AND
- (6) THE PRIMARY USE OF THE PROPERTY IS FOR CHARITABLE PURPOSES.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one that asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

Oakside Corporation is the owner of the parcel in question. There is a ground lease between Oakside Corporation and Riverside Senior Living Center for a period of twenty years for no rent. The Illinois courts have held that a charitable organization was entitled to a property tax exemption on the property it occupied although the organization's "holding company" was the legal titleholder of the property and rented a section not at issue to a third party. The holding

company was not profiting from the property and the charitable organization was the equitable owner for property tax purposes. The charitable organization was actually using its portion of the property for charitable purposes and was entitled to a property tax exemption for the taxable period at issue. Community Mental Health Council, Inc. v. Department of Revenue, 186 Ill.App.3d 73 (1st Dist. 1989). I find the facts of Community Mental Health Council are similar to the facts at issue. For purposes of a property tax exemption for the taxable year in question, I therefore find that Riverside Senior Living Center is the equitable owner of the property in question.

I take administrative notice of the Department's determination in this matter that prior to the hearing Oakeside Corporation, as owner, and Riverside Senior Living Center, as lessee, by clear, conclusive, and convincing evidence proved to the Department that it satisfied the requirements outlined in the above cases to qualify for a charitable property tax exemption for the subject property for the 1995 assessment year.

The burden of proving that an applicant is entitled to a property tax exemption is always upon the applicant; however, in order for a complaint to pass muster, the complaint must state a cause of action in two ways. First it must be legally sufficient, that is, it must set forth a legally recognized claim as its avenue of recovery. Second, the complaint must be factually sufficient. It must plead facts which bring the claim within the legally recognized cause of action alleged. People ex rel. Fahner v. Carriage Way West, Inc., 88 Ill.2d 300 (1981). In fact, the Court in that case stated:

Illinois is a fact-pleading State. This means that although pleadings are to be liberally construed and formal or technical allegations are not necessary, a complaint must, nevertheless, contain facts to state a cause of action. *Id* at 308

At the hearing, the Board of Review offered no facts, evidence, or testimony to invalidate the finding by the Department that the applicant was entitled to the exemption. In its brief, the Board of Review asserts that the applicant has failed to meet its burden in proving exempt status

without supplying any additional facts or evidence to support the assertion. The brief seems to rely on the financial statement and the facts that revenue was generated from resident and patient accounts to support the proposition that the applicant is not entitled to a property tax exemption.

Illinois courts have repeatedly stated that the fact that an organization charges fees to persons that can afford to pay does not mean that a facility is not actually and exclusively used for charitable purposes. Small v. Pangle 60 Ill.2d 510 (1975); Vermilion County Museum Society v. Department of Revenue, 273 Ill.App.3d 675 (4th Dist. 1995); Resurrection Lutheran Church v. Department of Revenue, 212 Ill.App.3d 964 (1st Dist. 1991)

I therefore find that the intervenor has not met its burden of going forward with evidence to negate the finding of the Department that the applicant is a charitable organization and that its use of the parcel in question qualifies for a charitable exemption.

It is therefore recommended that Kankakee County Permanent Parcel Index No. 09-31-100-021 be exempt from property tax for the 1995 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
October 13, 1998